

PROGRAM ADVISORY

Date: March 30, 1990
Program: Special Needs in
Alternative Programs
Phone: See Page #6

CALIFORNIA STATE DEPARTMENT OF EDUCATION
721 CAPITOL MALL, SACRAMENTO, CA 95814

TO: Superintendents, County Offices of Education
Superintendents, Unified and High School Districts
Special Education Administrators of County Offices
Directors, Special Education Local Plan Areas
Special Education Directors of Unified and High School Districts
Middle School Principals
High School Principals
Continuation School Principals

FROM: Shirley A. Thornton, Ed. D.
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Specialized Programs

SUBJECT: SERVING INDIVIDUALS WITH EXCEPTIONAL NEEDS IN
ALTERNATIVE EDUCATION PROGRAMS

The purpose of this advisory is to clarify the requirements for providing special education services to individuals with exceptional needs who are placed in alternative education programs. The need for clarification is due to the practice in some districts of discontinuing special education services upon entrance of a special needs student into an alternative education program.

Alternative education programs, as defined in this advisory, include the following programs for students up to age 22:

- Continuation Schools
- Opportunity Schools
- Opportunity Classes/Programs
- Independent Study
- Juvenile Court and Community Schools
- Programs Serving Pregnant and Parenting Teens

Note: Alternative Education Programs should also be understood to include Community Day Schools (which were established under 1995 legislation after this program advisory was issued).

Policy Summary

It is the position of the California Department of Education that students eligible for special education services shall have access to an alternative education program when such a program is deemed educationally beneficial to that student. It is also the position of the State Department of Education that once enrolled in a special education program, the student shall continue receiving appropriate special education services until or unless it is determined by the Individualized Education Program (IEP) team that the services are no longer needed.

Background and Explanation

Alternatives to a traditional comprehensive high school were developed to meet the needs of students who did not experience success in traditional school settings. Some of these program alternatives are so tightly linked to the specific population for which the program was originally established that their value for other students is often overlooked.

Special education students shall not be denied access to alternative education programs based solely on their handicapping condition. Once enrolled in an alternative education program, they shall receive the appropriate special education and related services pursuant to their IEP. Special education students are defined as those persons whose impairment requires instruction, services, or both which cannot be provided with modification of the regular school program; and who therefore meet the eligibility criteria for special education services. Such students are identified by an IEP team as students with exceptional needs.

Special education programs and services necessary to meet the needs of these students shall be made available in a continuation or any other alternative education program in accordance with the IEP. An IEP team meeting must be convened anytime an individual with exceptional needs is referred for placement in an alternative education setting.

As with other program placements, once a student is placed in the alternative education setting, the decision to discontinue special education services shall be made only by the IEP team, if (a) it concludes that the student's needs cannot be met in an alternative education setting, or (b) after determining that the student's problems have been remediated or modified to the degree that the student is capable of competing successfully in the alternative school environment without continued special education assistance.

A special education student may be appropriately "exited" from special education and related services only when it is determined by the IEP team that he or she no longer needs those services to benefit from the education program.

Questions and Answers

(1) Question: Who determines when a special education student should be placed in an alternative education program?

Answer: Each district should develop policies and procedures for placing special education students in alternative education programs. In general, the IEP team can recommend the placement, but the final decision is made by the district

administrators (Education Code Section 48432).

In situations where students are referred to continuation, opportunity, or other alternative education programs, there are specific procedures to be followed. (See Education Code Sections 48637.1 - 48637.3 and 48432 - 48432.5.) Prior to the placement of a student with special needs, the IEP team must meet and agree upon an appropriate educational program. This meeting of the IEP team for consideration of the student's educational program is to be distinguished from the actual placement decision, the responsibility of which rests with the local administrator. If the parents disagree with the placement, they may ask for a due process hearing.

- (2) Question: Shall special education services be provided for students in alternative education programs who are identified as handicapped?

Answer: Yes. These services may be provided by alternative education staff with special education credentials, district or county special education personnel, or other qualified agency personnel as designated instruction and services (DIS) and/or resource specialist programs (RSP), and Special Classes (formerly Special Day Classes). Hours of student attendance in DIS and RSP programs are credited to the continuation program attendance apportionment up to a maximum of the pupil's minimum day as prescribed by the IEP multiplied by the number of days school is in session that week. Special Class attendance warrants special consideration. For specific information on your situation, contact your regional special education consultant.

- (3) Question: What procedures should be used upon the placement of an individual with exceptional needs into an alternative education setting?

Answer: Education Code Sections 48432 - 48432.5 cover procedures for placement of non-special education students in continuation programs. Sections 48637.1 - 48637.3 cover placement in opportunity programs and classes. Individuals with exceptional needs are entitled to their special services within the alternative education program and cannot be excluded from these programs or special services. Students with special needs cannot be placed involuntarily in an alternative education program.

Upon placement of an individual with exceptional needs into an alternative education program, an IEP team meeting is needed to revise the IEP accordingly. A representative of the alternative education program should participate in the process. Further, the student's IEP must be shared with the alternative education program staff as well as the special education staff at the site (Education Code Section 56347).

- (4) Question: Is there a "best" model for delivery of special education and related services to a student placed in an alternative education setting?

Answer: The "best" model depends entirely on the educational needs of the student. The

educational needs of the student are determined by the IEP team. The IEP team determines what special services are needed and may recommend how the services can best be provided.

If the alternative education program is located on or adjacent to the comprehensive high school campus, special education students may receive the special education portion of their program at the main campus and return to the alternative education site for the rest of their instruction. This model necessitates coordination and communication between the special education and alternative education staff and any other staff working with the student.

- (5) Question: Is placement in an independent study program appropriate for a special education student?

Answer: Such a placement is appropriate if the educational needs of the student identified by the IEP team can be met through the placement. It is unlikely that a special education student who requires specialized instruction and services would benefit from an independent study program, since such programs require that the student attend class only one hour a week and complete the rest of the work on his or her own. However, a special education student who is health-impaired and confined to a hospital or similar convalescing setting for an extended period of time might benefit from an independent study program.

- (6) Question: Can a student whose disabling condition is severe be placed in an alternative education program?

Answer: Yes. Any student may be placed in an alternative education program. If an IEP team determines that a student can benefit from placement in an alternative education setting, that recommendation should be included in the IEP.

- (7) Question: Can special education students be placed in alternative education programs solely because they are “discipline problems”?

Answer: No, Special education students who are “discipline problems” in the conventional high school setting shall not be placed in alternative education programs solely because of discipline problems. Any change in educational program for the identified special education student shall be determined by the IEP team. When consideration of a change to or from an alternative education program is contemplated for an individual with exceptional needs, a representative from that program should participate as a member of the IEP team.

- (8) Question: Can a student with “learning disabilities” be placed in an alternative education setting?

Answer: Yes. Any special education student for whom placement in an alternative education setting is deemed appropriate by the IEP team may be so placed.

- (9) Question: Which special education students would be most likely to benefit from alternative education programs?

Answer: In general, the same criteria apply to special education students as to non-special education students who are placed in alternative education programs. The indicators of possible benefit from an alternative setting may include: students with poor attendance or achievement, students who need to work at a slower pace or in a smaller class, and individualized attention or students who have work permits.

When there is a need to remove a pupil from the regular classes and school where he or she would normally be attending, the need must be documented. The IEP team must exhaust other less restrictive placements and then may recommend the appropriate placement, which may include an alternative education program.

- (10) Question: Does a special education student continue to receive special education and related services in the alternative education setting?

Answer: If services are delineated on the IEP, the local education agency is responsible for providing such services in the alternative education setting.

- (11) Question: What is the legal length of the minimum day for a special education student placed in an alternative education setting?

Answer: The legal minimum day for continuation programs and opportunity classes is 180 minutes, though in many cases local education agencies provide a longer day. The minimum day for special education students is 240 minutes; however, according to California Code of Regulations, Title 5, Section 3053 (b) (2), a special education student can have the same length day as his or her alternative education peers.

- (12) Question: What are the cost or resource considerations of a district serving a student with exceptional needs in an alternative education program?

Answer: Special education services are funded through the allocation of instructional personnel service units (IPSU). The funding for the special services is provided whether the student attends a traditional comprehensive high school or an alternative education program. (Special Classes warrant special treatment to correctly allocate revenue limit income.) For further information, contact your state regional special education consultant.

Placement of special education students in alternative education programs requires special education staff to serve the needs of these students either at the alternative education setting or at a nearby site.

The requirement for additional special education staff at a site may require extra space as well as additional expenses for specialized equipment and

instructional materials.

Additionally, time is needed for special education and regular education staff to meet and coordinate the student's instruction.

(13) Question: Can parents appeal the determination of an IEP team that an alternative education placement would be educationally appropriate for a student with special needs?

Answer: Yes. Parents may request a due process hearing if they wish to appeal any IEP team decisions or recommendations.

(14) Question: If a special education student placed in an alternative education setting turns 18, is the alternative education program obligated to provide the service until the student is 22?

Answer: Yes, as long as the student has not completed the requirements for graduation, he or she is entitled to receive special education and related services through the remainder of the school year during which he or she turns 22.

For additional information contact:

Bob Ehlers, Consultant, Youth, Adult and Alternative Educational Services Division,
(916) 323-2561.

State Regional Special Education Consultant, Program Assistance Unit, Special Education Division, (916) 323-4750.

Except where statutes or regulations are referred to or form the basis of any statement, this information is merely exemplary and compliance is not mandatory (Education Code Section 33308.5).

APPENDIX

Legal References

The California Education Code, Part 30, in its entirety deals with Special Education Programs. Education Code Sections 56302 and 56320 delineate identification and assessment procedures. Education Code Sections 56360 - 56361.5 describe the continuum of program options. Sections 56362 - 56362.5 describe the Resource Specialist. California Code of Regulations, Title 5, Section 3000 et. seq., refers to the scope of special education and services. Sections 3022 - 23 refer to assessment; Section 3024 refers to the transfer of a student to another program and Section 3040 refers to the implementation of the IEP.

According to California Education Code, Section 58500, “ ...an alternative school is defined as a school or separate class group within a school which is operated in a manner designed to:

- a) Maximize the opportunity for students to develop the positive values of self-reliance, initiative, kindness, spontaneity, resourcefulness, courage, creativity, responsibility, and joy.
- b) Recognize that the best learning takes place when the student learns because of his desire to learn.
- c) Maintain a learning situation maximizing student self-motivation and encouraging the student in his own time to follow his own interests. These interests may be conceived by him totally and independently or may result in whole or in part from a presentation by his teachers of choices of learning projects.
- d) Maximize the opportunity for teachers, parents and students to cooperatively develop the learning process and its subject matter. This opportunity shall be a continuous permanent process.
- e) Maximize the opportunity for the students, teachers and parents to continuously react to the changing world, including but not limited to the community in which the school is located.”

Section 58504 of the Education Code, states their “previous classroom performance shall not be a criterion limiting any student from the opportunity of attending an alternative school.” Further, “any alternative school shall be maintained funded by the school district at the same level of support as other educational programs for children of the same age level operated by the district” (E. C. Section 58507).

Education Code Section 48438 reads:

It is the intent of the Legislature that special funds for eligible pupils be expended by the continuation schools in which those pupils are enrolled. State and federal categorical funds shall be allocated to continuation schools in the same manner as to comprehensive schools to the maximum extent permitted by state and federal laws and regulations.

Individuals with exceptional needs as identified per Education Code Section 56026 have a right to participate in a free appropriate public education and the special education instruction and services needed in order to ensure them of the right to an educational opportunity to meet their unique needs. (E.C. Section 56000) It is the intent of the Legislature that individuals with exceptional needs are offered special education assistance in programs that promote maximum interaction with the general school population in a manner that is appropriate to the needs of both students (E.C. Section 56001 (g)). Accordingly, special education programs and services shall be made available in alternative and continuation education programs, as elsewhere, in order to meet the identified needs of the special education students placed in those programs as stated in their individualized education program (IEP).

From Education Code Section 56031:

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program and related services, at no cost to the

parent, which may be needed to assist such individuals to benefit from specially designed instruction.

Special education is an integral part of the total public education system and provides education in a manner that promotes maximum interaction between handicapped and non-handicapped pupils in a manner, which is appropriate to the needs of both.

Special education provides a full continuum of program options to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment....

Individuals with exceptional needs can be transferred out of special education programs when special education services are no longer needed” (E.C. Section 56001 (h)). However, an individual with exceptional needs may receive special education and related services as part of the full range of program options available to them in the least restrictive environment. Such an environment could be an alternative education program, continuation program or opportunity school or class, if specified by the IEP team.